Trade Policy Project

Trade Defence Instruments

Presented by: Marius Bordalba
Institute of International Relations
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Need for trade remedies?

- Trade liberalisation as a pre-condition?
- Existence of unfair trading practices in international trade (solution: **dumping and subsidies**)
- Competition from **fairly** traded imports (solution: **safeguards**)
- Use of these instruments is subject to **strict substantive and procedural rules**

Substantive elements

Anti-dumping

- Dumping
- Material injury
- Causality

Countervailing

- Subsidi-sation
- Material injury
- Causality

Safeguard

- …as a result of unforeseen developments and the effect of obligations
- Increase of imports
- Serious injury
- Causality

Definition of dumping

Normal Value in the Exporting Market

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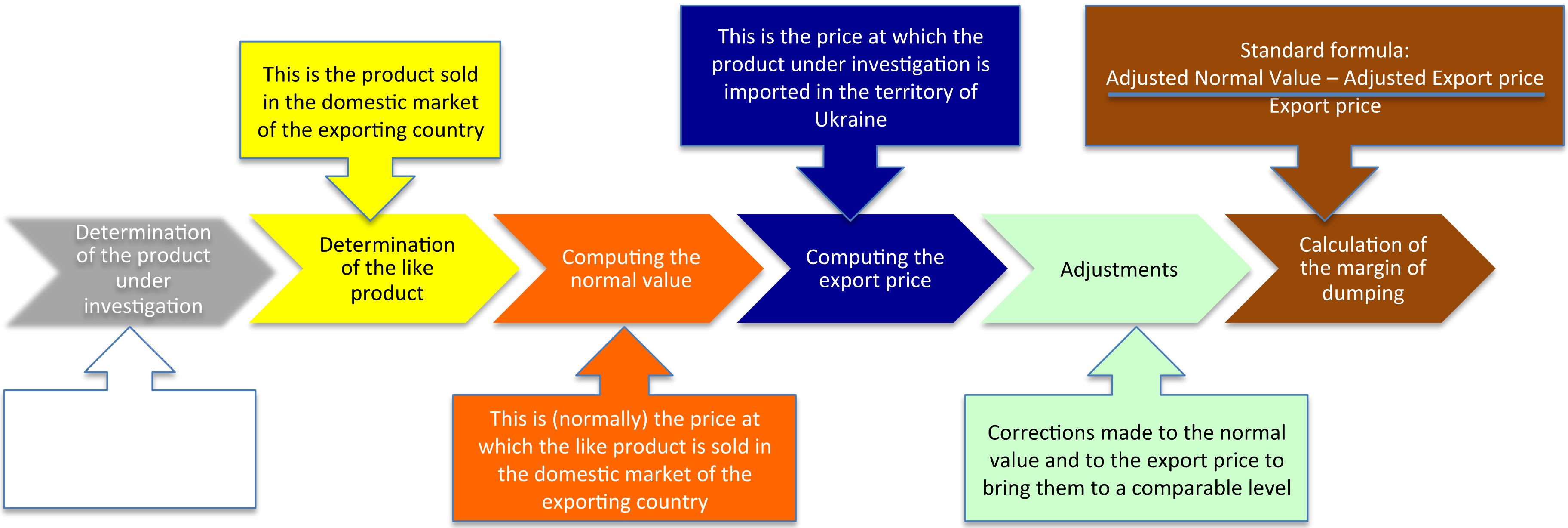
Export Price

If a product is exported at a price (Export Price) lower than the price (Normal Value) it charges on its own home market, it constitutes "dumping"

Therefore, a dumping determination <u>normally</u> requires a comparison of <u>prices</u>

6 steps



This is the product sold in the domestic market of the exporting country
This is the price at which the product under investigation is imported in the territory of Ukraine
Standard formula:
Adjusted Normal Value – Adjusted Export price
Export price
Determination of the product under investigation
Determination of the like product
Computing the normal value
Computing the export price
Adjustments
Calculation of the margin of dumping
This is (normally) the price at which the like product is sold in the domestic market of the exporting country
Corrections made to the normal value and to the export price to bring them to a comparable level

Step 1 & 2: The Products

Product under investigation (PUI)

No specific rules about its determination; in practice, investigating authorities define it as requested by the applicant

Like product (LP)

Defined in relation to the PUI

LP is a product which is identical or that has characteristics closely resembling those of the PUI

Factors considered: raw materials, chemical composition, production process, end use & consumer preferences

Step 3: Normal Value

Generally, the price of the like product when sold in the <u>exporting</u> country

BUT

SOME EXCEPTIONS!

Exceptions

1) There are no sales of the like product in the *ordinary course of trade*
2) When such sales do not permit a proper comparison because of:
   - a *particular market situation*; or
   - the *low volume* of sales (less than 5% of export sales) in the domestic market of the exporting country
3) "Non-Market Economy" Clause (*Ad Article VI.1*, para. 2)

Sales below cost

Date	Quantity	Normal Value	Export Price
1/8	10	40	50
10/8	10	100	100
15/8	10	150	150
20/8	10	200	200

Full cost of production = 50

Exclusion of sales below cost (in this case, the 1/8 sale at 40) will increase the normal value and thereby makes a finding of dumping more likely.

- 20% rule:
  - Normal Value = 150 ((100+150+200)/3))
  - Average Export Price = 125 ((50+100+150+200)/4)
  - Dumping Amount = 100 (25 x 4)
  - Dumping Margin = 19% (100/525[CIF price])
- No 20% rule:
  - Normal Value = 122.5
  - Average Export Price = 125 = NO DUMPING

Source: Trade Remedies – A tool kit, ADB

Alternatives

Domestic prices in the exporting country

Export price to a third country

<u>Note:</u>
no hierarchy between these two

Constructed value in the exporting country

Step 4: Export Price

- What is the export price?

  Price at which the product under investigation is introduced into the commerce of the importing country

- Normally this information will be available from the Customs Dept.

Step 5: Fair comparison

- Sales made at as nearly as possible the same **time**
- Due allowance must be made for **differences which affect price comparability**, including differences in
  - conditions and terms of sale
  - taxation
  - quantities
  - physical characteristics
  - levels of trade, and
  - any other differences which are demonstrated to affect price comparability

Step 6: Calculation MoD

$$DM = \frac{NV_{EXW} - EP_{EXW}}{EP_{CIF}} \times 100\%$$

Where

DM – Dumping margin

NV_{EXW} – Normal value at ex works level

EP_{EXW} – Export price at ex works level

EP_{CIF} – Export price at CIF level

Step 6: Calculation MoD

1. **Weighted average NV compared to weighted average of all comparable export prices**
2. **Individual transaction to individual transaction**
3. **Weighted average NV compared to individual export prices**
   - Only if:
     - Pattern of EP's differing significantly among different purchasers, regions or time periods ("targeted dumping")
     - Explanation provided why 1 and 2 not suitable

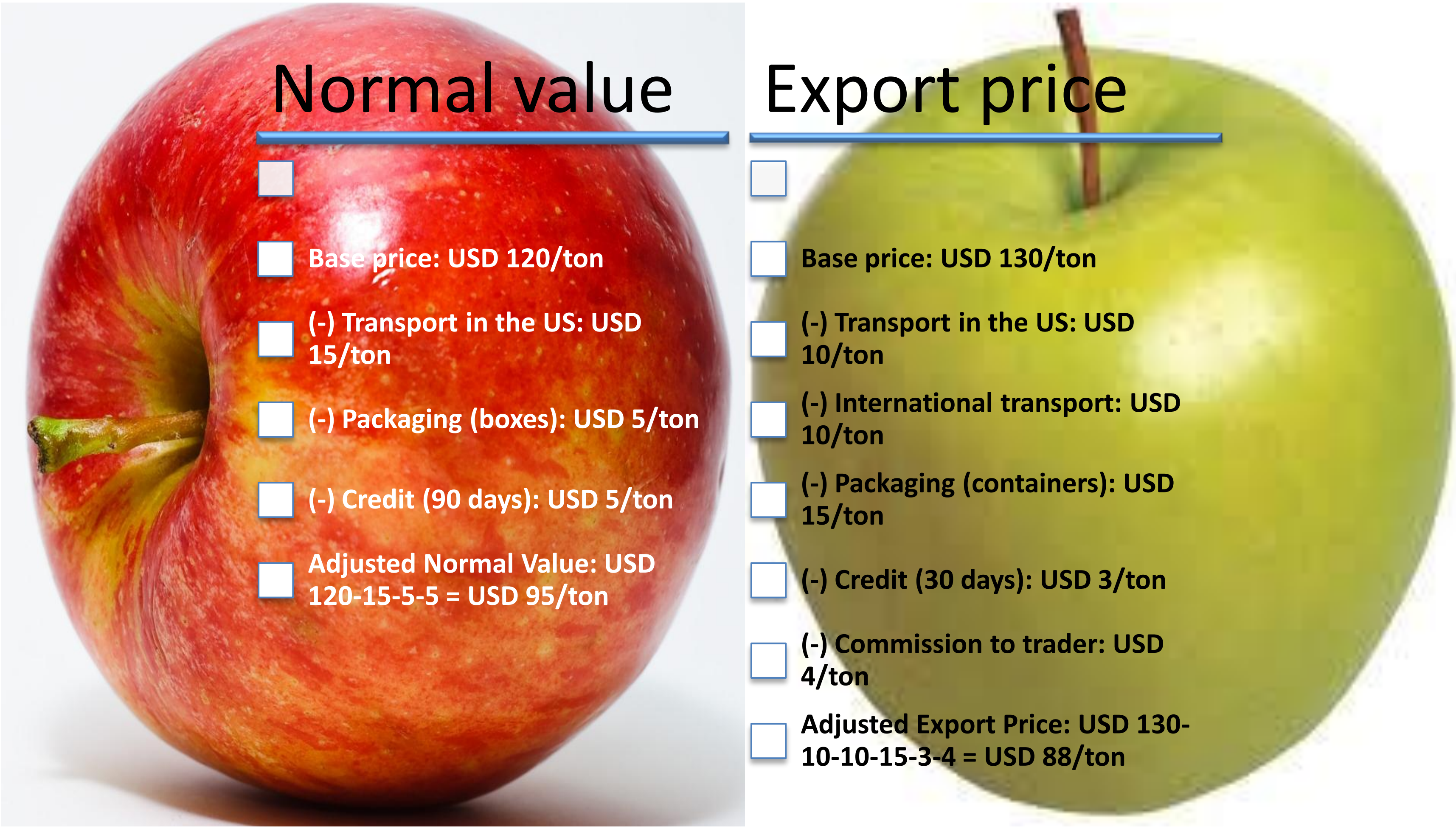
Example

Facts

Turkish producers produce and sell red apples in Turkey. They sell them on a delivered basis, bearing costs of transport from the farm to the warehouse of the buyer. They pack them in special boxes and get paid after 90 days

Turkish producers produce green apples for export to Ukraine. US producers sell apples on a CIF basis, Odessa quay. They pack them in special containers, and get paid after 30 days. They pay a commission to a Ukrainian trader

Adjusting the NV and EP



Normal value

- Base price: USD 120/ton
- (-) Transport in the US: USD 15/ton
- (-) Packaging (boxes): USD 5/ton
- (-) Credit (90 days): USD 5/ton
- Adjusted Normal Value: USD 120-15-5-5 = USD 95/ton

Export price

- Base price: USD 130/ton
- (-) Transport in the US: USD 10/ton
- (-) International transport: USD 10/ton
- (-) Packaging (containers): USD 15/ton
- (-) Credit (30 days): USD 3/ton
- (-) Commission to trader: USD 4/ton
- Adjusted Export Price: USD 130-10-10-15-3-4 = USD 88/ton

Calculation of the DM

Adjusted Normal Value (**95 USD/ton**) – Adjusted Export Price (**88 USD/ton**) *{Average}*

CIF Export price (**USD 130/ton**) *{Average}*

=

5.4%

Subsidies & CVM

Option 1 → **National CVD investigation**

↓

Result: Imposition of CVD measures at the border → **Determination may be appealed to WTO**

Subsidies & CVM

Option 2

WTO Dispute

Assessment made by a panel & AB of the WTO

Result: WTO requests the subsidy to be withdrawn or its effects eliminated

CV Measures

Two Stages:

Stage 1	Stage 2
Assessment and determination that a measure constitutes a specific subsidy	Calculation of the amount of the subsidy for each measure, and total for all measures
Regulated in Articles 1 and 2 of the ASCM	Regulated in Article 14 of the ASCM

(*) ASCM – Agreement on Subsidies and Countervailing Measures

Stage 1: Subsidy and specificity determinations

What is a Subsidy?

Financial assistance provided by the government that confers a benefit to its beneficiary

Important: Only actionable under the current framework if a subsidy is specific

Subsidy determination

Step 1

- Does the programme constitute a financial contribution of Article 1.1(a)(1) or (2) of the WTO ASCM?
- If the answer is "yes", continue to the next step

Step 2

- Is the financial contribution granted "by a government or any public institution within the territory of a Member"?
- If the answer is "yes", continue to the next step

Step 3

- Does the financial contribution confer a benefit to its recipient?
- If the answer is "yes", **the programme investigated constitutes a subsidy for the purposes of the WTO ASCM**

Elements – Financial contribution

Direct transfer of funds

Potential direct transfer of funds

Government revenue that is due is foregone or not collected

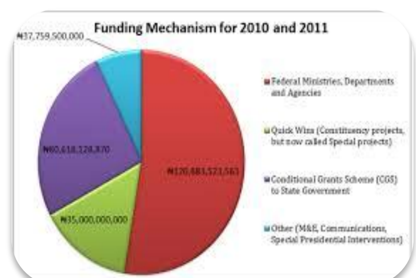

AGRI-BUSINESS

Centre hikes cotton support price, to buy 90 lakh bales

Price or income mechanism


Government provides goods or services, other than general infrastructure

Government purchases services



Government makes payments to a funding mechanism

Elements – Govt.

- **By a government or any public institution**
  - Cross-subsidisation among private companies is <u>not</u> actionable
  - Govt includes all levels (central, federal, regional, municipal, etc.)
  - Public body: not defined but includes e.g. companies in which the state has ownership
  - Govt “entrustment” or “direction”
  - “Within the territory” i.e., not World Bank or ODA

Elements - Benefit

- **Benefit**
  - A measure or programme is **not** actionable unless is confers a benefit to its recipient
  - Economic assessment is normally required:

    Is the financial contribution provided on terms that are more advantageous than those that would have been available to the recipient on the market?
  - Benchmarks: e.g. conditions and terms for a loan extended by a commercial bank; taxes that would be paid by a company not using a programme; etc

Specificity

Specificity *de jure*

- Enterprise or group thereof
- Industry or group thereof
- Regional
- Prohibited subsidies (export subsidies and local content subsidies)

Specificity *de facto*

- Subsidies which are not *de jure* specific but for which "there are reasons to believe that the subsidy may be *in fact* specific"
- Factors: use of the programme by a limited number of certain enterprises, predominant use by some enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises etc.

Non-Specific Subsidies

Stage 2: Calculation of the subsidy amount

The rules in the ASCM

- ASCM grants a certain degree of freedom to Members to determine the methodologies to be used but…
- … the methodologies adopted must be published and explained
- … methodologies must be consistent with the guidelines provided in Article 14

Guidelines Art. 14 ASCM

1. Provision of equity capital (usual investment practice)
2. Loans (comparable commercial loan)
3. Loan guarantees
4. Provision of goods or services (adequacy of remuneration/prevailing market conditions)
5. Purchase of goods, not services (same as 4 above)

Example Calculation - Loan

1. A company receives a loan from a public bank for a value of USD100,000 to buy raw materials.

   Annual interest rate: 2%. Term: 1 year
2. The annual interest rate for a comparable commercial loan would be **6%**
3. Calculation (ad valorem):

$$\frac{\text{USD6,000} - \text{USD2,000}}{\text{USD100,000}} = 4\%$$

Example calculation - Grant

1. A company receives a grant (USD1 million) from the government to buy a machine
2. The company sells USD20 million of goods produced with the machine bought
3. Calculation (ad valorem):

$$\frac{\text{USD 1 million}}{\text{USD20 million}} = 5\%$$

Definition of Safeguard

Extraordinary and temporary import relief measure to protect a domestic industry which can be imposed regardless of the existence of any unfair trading practice

Safeguards in WTO

- – Agreement on Safeguards
- – Agreement on Agriculture, Article 5
- – China Specific measures (Lapsed)
- – Agreement on Textiles and Clothing, Article 6 (Lapsed)

Safeguards

Differ from AD/CVD:

- Don’t require “unfair” practice
- To be taken on MFN basis (with exceptions)
- Have to “pay” when take them (sometimes)

Basic Requirements

Article XIX of GATT 1994

- A determination that,
- As a result of (i) **unforeseen developments** and (ii) the effect of a **Member's obligations** under GATT 1994
- A product is being imported in **such increased** quantities
- As to **cause or threaten** to cause
- **Serious** injury
- To the **domestic industry**
- Producing **like or directly competitive products**

Article XIX GATT 94

If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions…

Unforeseen Developments

- Unforeseen means "unexpected", <u>not</u> "unforeseeable"
- Temporary moment: When the concession at stake was negotiated
- Must be demonstrated as a matter of fact for a safeguard measure to be applied consistently with Article XIX
- This analysis must be reflected in the public report of the investigation

Unforeseen Developments

Unforeseen developments

- Increased imports
- Serious Injury
- Causal relation-ship

The determination must explain how the "unforeseen developments" resulted in the increase in imports causing the serious injury in question

“Effect of the Obligations…”

- It **must be demonstrated**, as a matter of fact, that the importing Member has incurred obligations under the GATT 1994, including tariff concessions
- The importing Member **must identify** those obligations incurred under the GATT 1994 that are linked with the increase in imports causing serious injury to its domestic industry
- This analysis **must be reflected** in the public report of the investigation

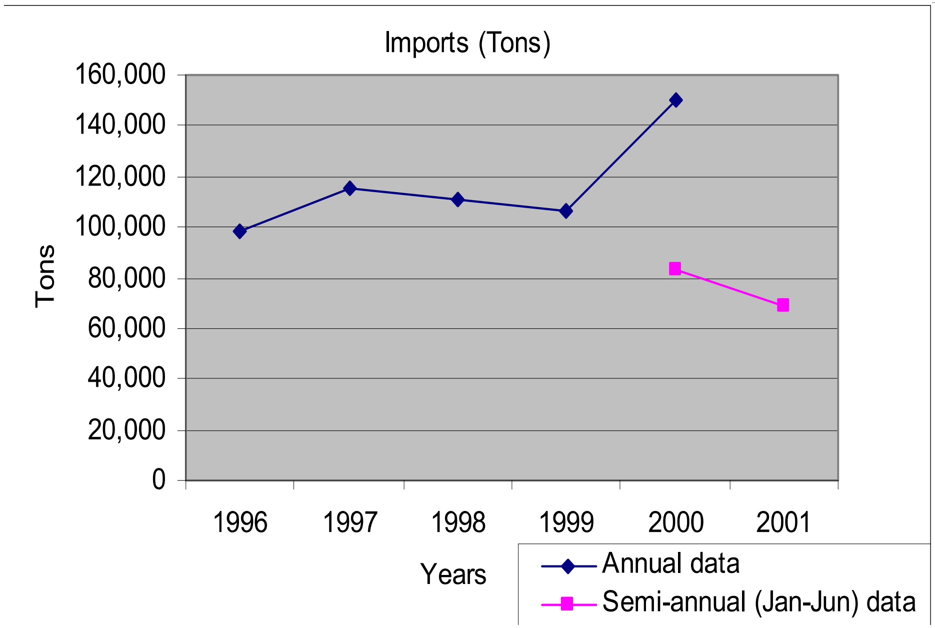
Increased Imports

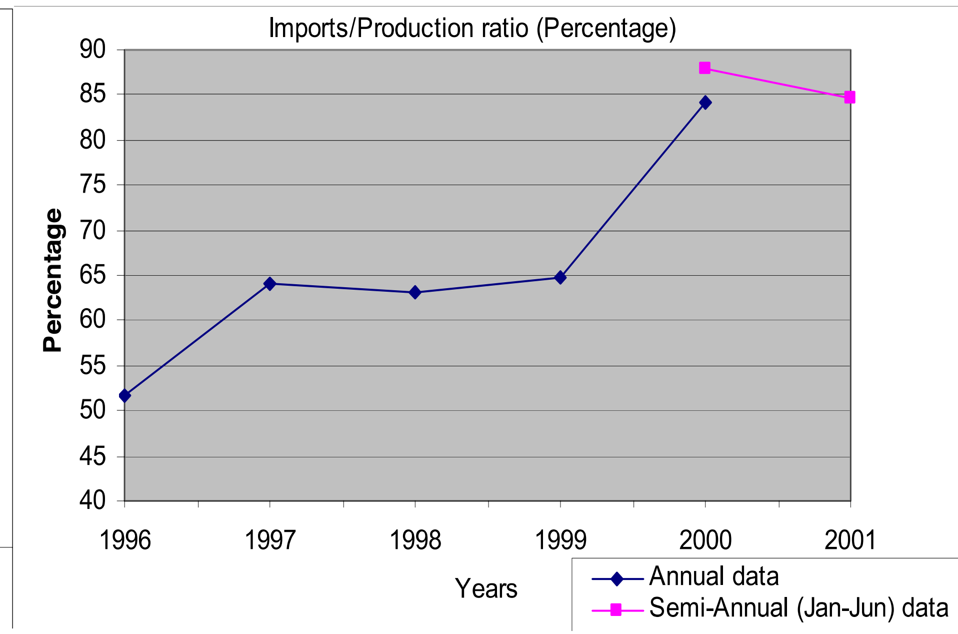
A Member may apply a safeguard measure to a product only … if such product is being imported into its territory in such increased quantities, absolute or relative to domestic production…

Increased Imports

- Increased imports in **absolute terms** or **relative to domestic production**
- Requires analysis of the **rate and amount** of the increase in imports
- Increase must have been **recent** enough, **sudden** enough, **sharp** enough and **significant** enough, both quantitatively and qualitatively
- It is **not** required that imports be increasing at the time of the determination
- Trends **over time** must be analysed

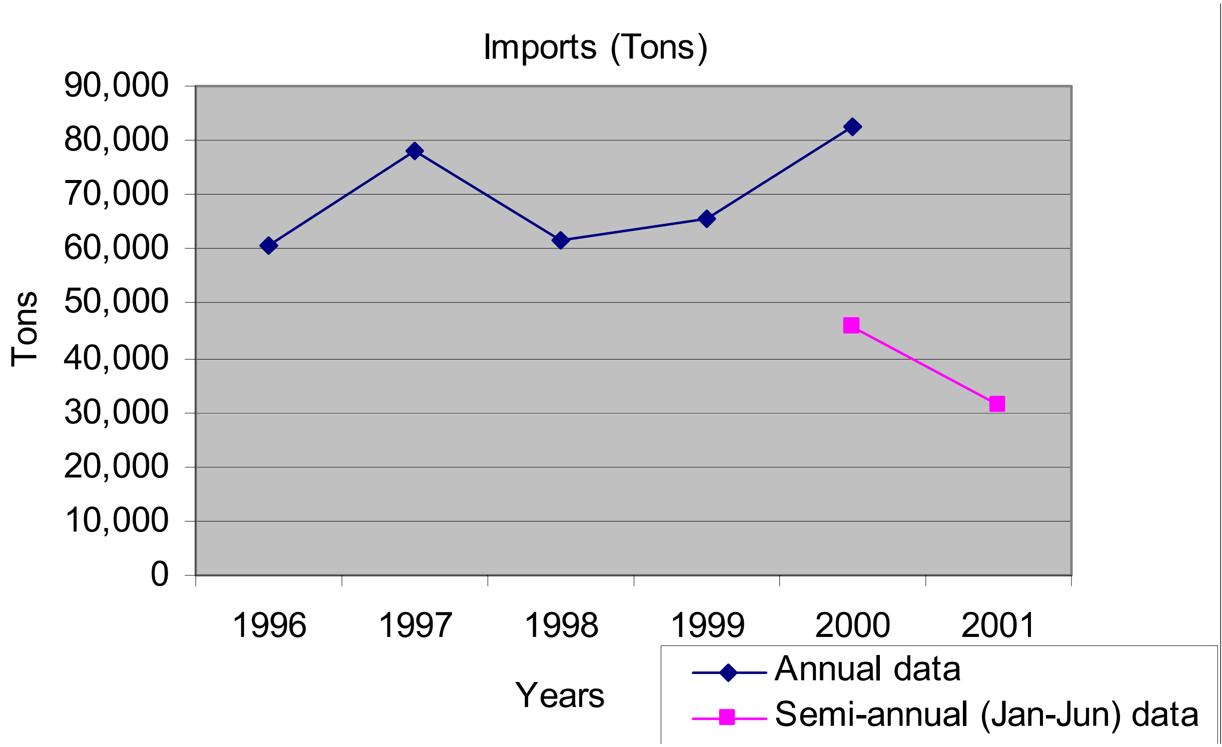
Increased Imports





US – Steel safeguards, p. 770

Increased Imports

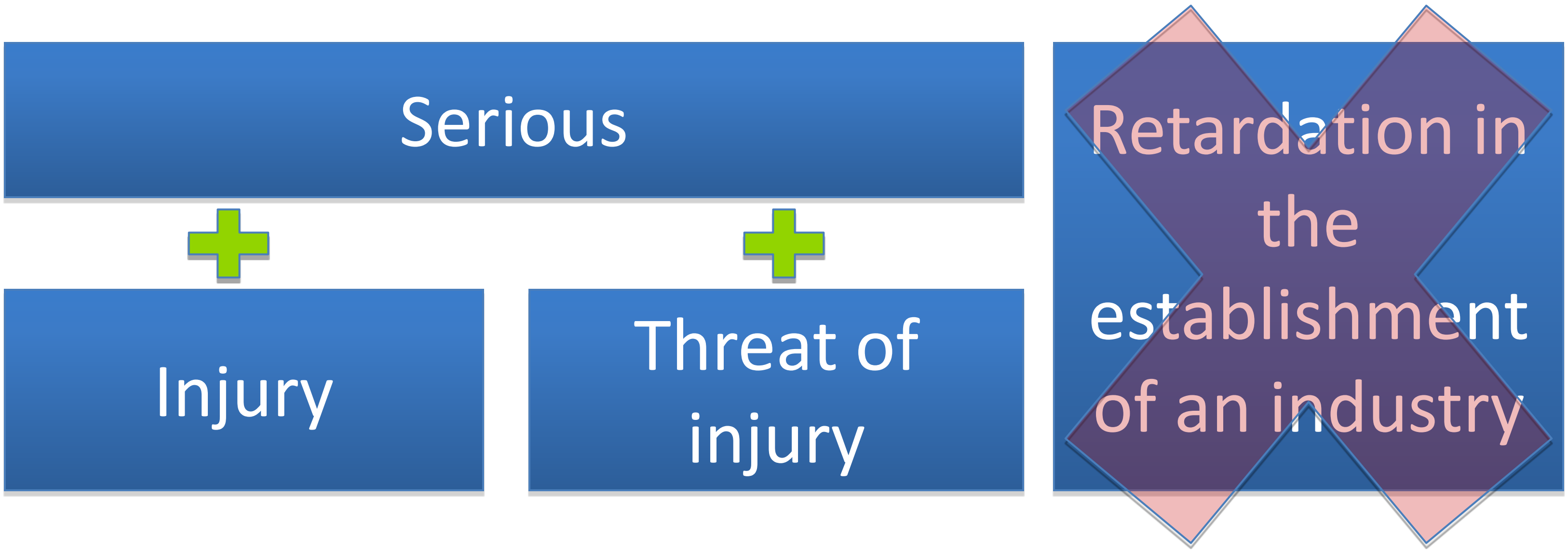


US – Steel safeguards, p. 775

Injury & Causal Link

Actual, or likely, <u>negative</u> impact suffered by a domestic industry as a result of imports of dumped/subsidised products or imports in increased volumes

Types of Injury



Injury to Whom?

Domestic industry:

Domestic producers

…of the like **or directly competitive** product which…

…as a whole **or** those of them whose collective output represents a major proportion of the domestic production

An Injury Determination….

…requires examining 3 aspects:

- – Development of volume of imports
- – Impact of those imports in the prices of the domestic industry
- – Impact of those imports on a number of pre-set factors

Volume & Price Effects

Volume:

– Has there been an increase of dumped or subsidised imports?

Price:

Price undercutting	**Price suppression**	**Price depression**
It occurs when or exporter offers to sell at a lower price than the price for the comparable local product	It occurs when price increases for the local product that would have otherwise occurred are prevented	It occurs when selling prices of the local product are reduced to meet dumped/subsidised import prices

Economic Impact of Imports

The Impact on the industry of importing country

- **Loss of Sales**
- **Reduced profits/losses**
- **Loss of market share**
- **Reduced returns on investments**
- **Decline in productivity**
- **Decline in output**
- **Under utilization of capacity**

Adverse Effect On

- Cash flow
- Inventories
- Employment
- Wages
- Growth
- New Investment
- Ability to raise capital

Threat of Material Injury

- Possible but stricter requirements than for a determination of material injury
- Possibility that injury occurs must be real and near to happen – not <u>remote</u>
- Based on proven <u>facts</u> rather than mere conjecture
- List of factors

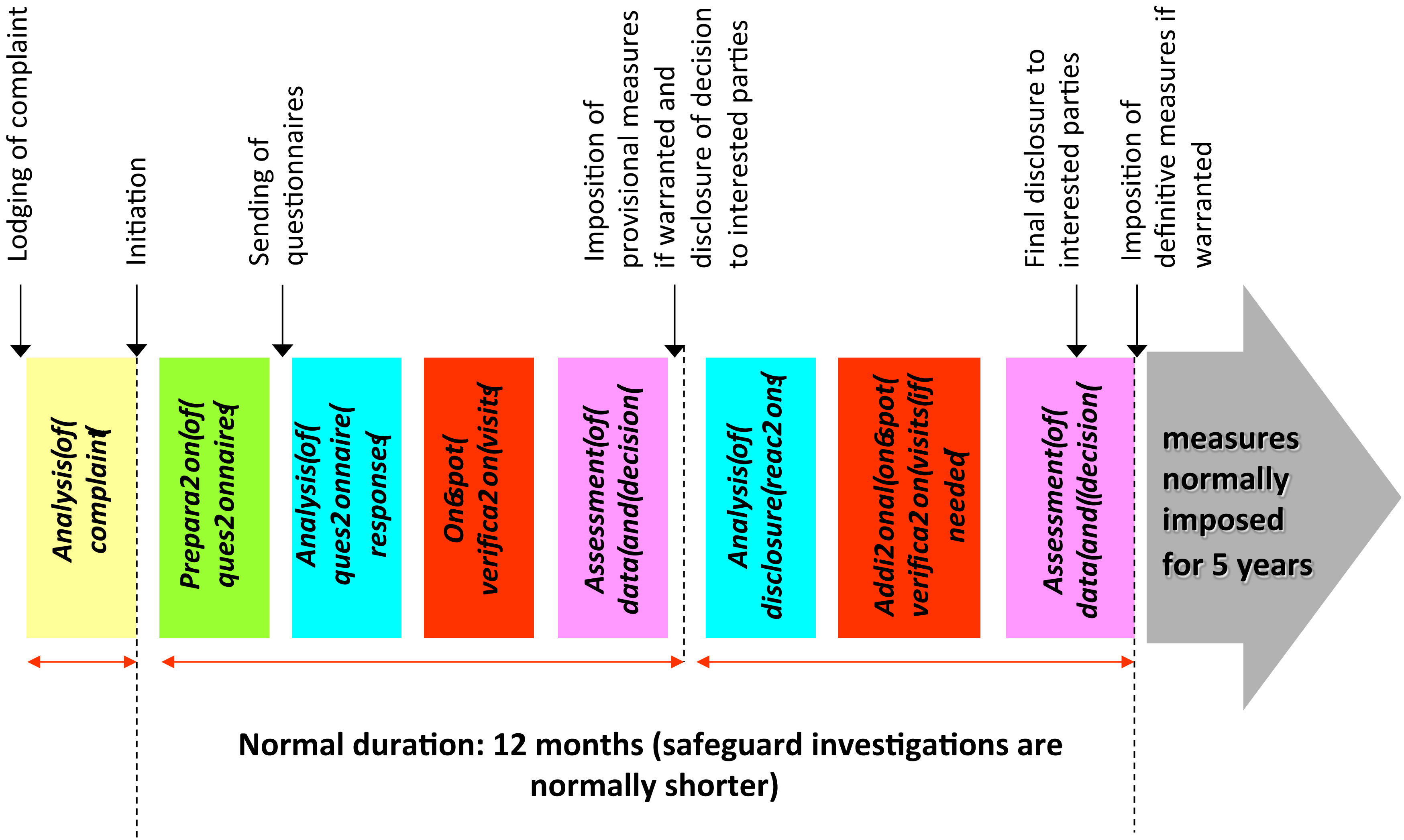
Causal Link

Final question:

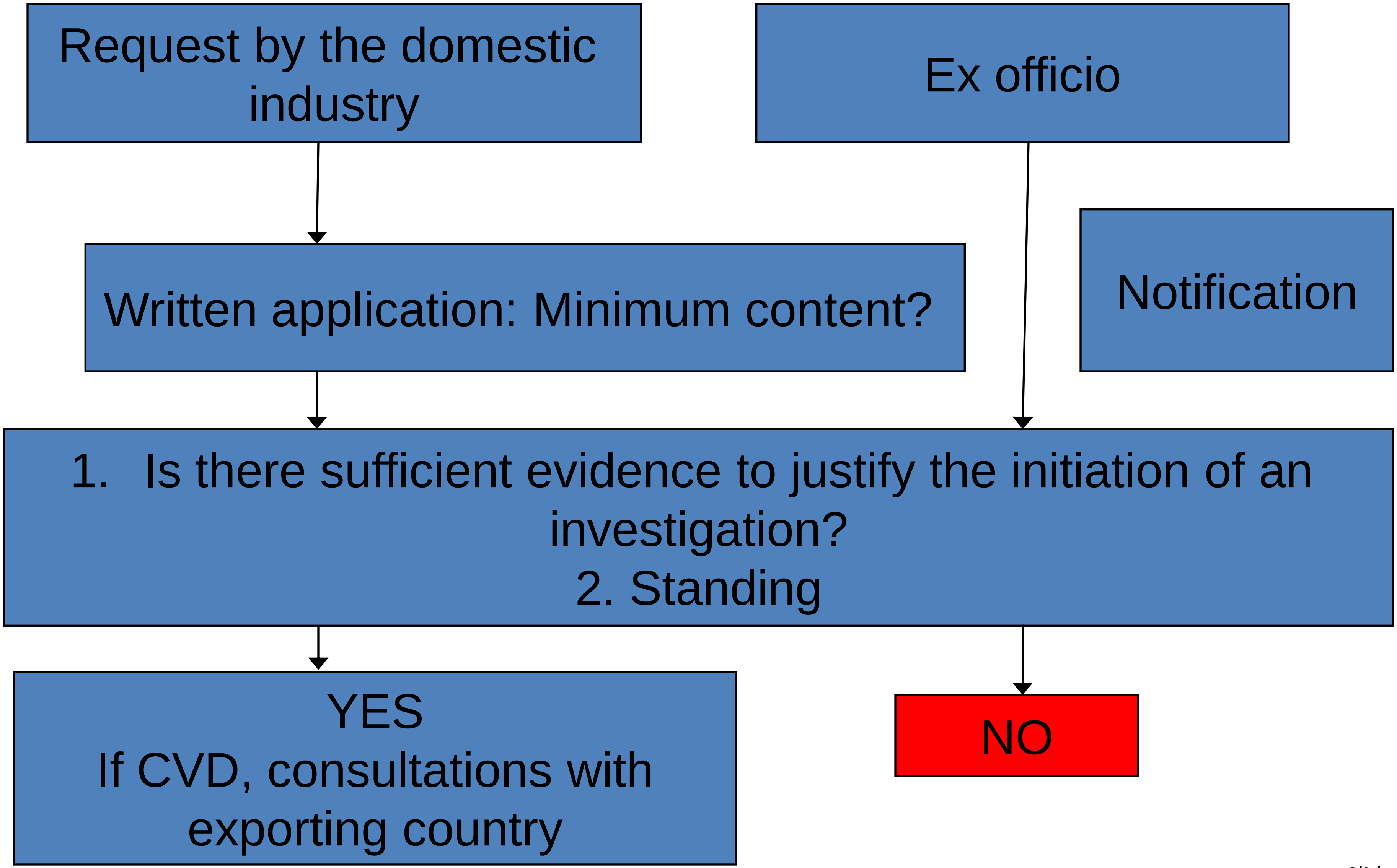
Are there any other factors that affected negatively the domestic industry?

- If so, the injury caused by these others factors must be separated and distinguished from injury caused by dumping/subsidies/increase of imports

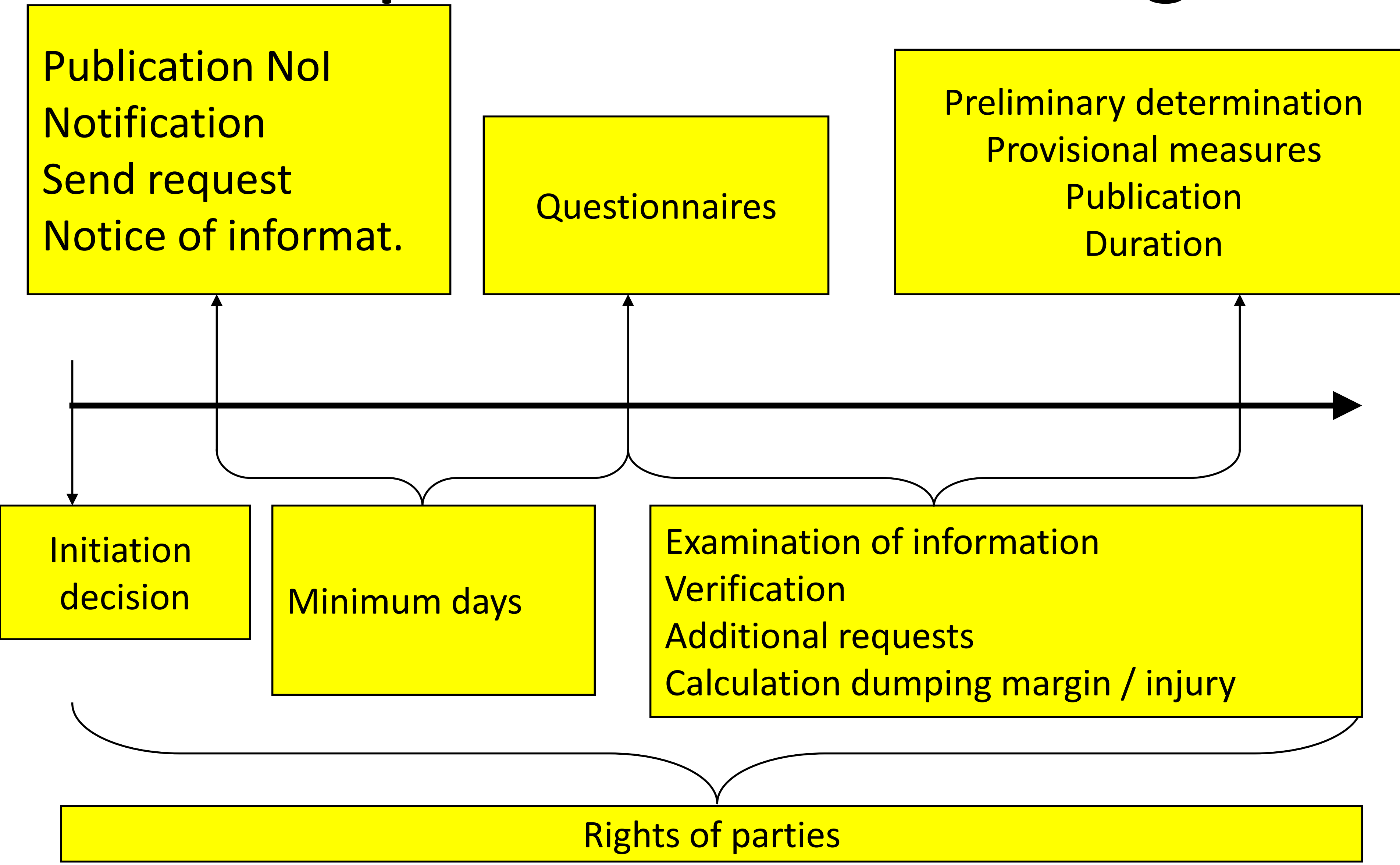
The Investigation Process….



Pre-initiation



Main post-initiation stages



Main post-initiation stages

Report on
“essential facts”

Imposition of measures?
Retroactive levying?
Publication
Application of the measure

Continuation of investigation

Analysis of comments
Undertakings
Final determination

De minimis
Negligible
volume
of imports

Rights of parties

Possible outcomes

Imposition of measures

AD & CVD

1.<u>Provisional measures</u>:

a) Ad valorem duties

b) Specific duties

c) Variable duties

2.<u>Final measures</u>

3.<u>Undertakings</u>

Safeguards

1.Increase in tariffs

2.Quota

3.Tariff quota

4.Other types of measures

Termination

1. Withdrawal of application
2. No dumping/subsidy, injury or causal link
3. De minimis dumping/subsidy
4. Negligible volume of D/S imports

Reviews

- Review of measures:
  - During the application of the measure:
    - Change in circumstances
    - Refund review
    - Newshipper review
  - At the end of the application of the measure, and with the purpose to prolong it:
    - Sunset review

Contact details

UKRAINE TRADE POLICY PROJECT

Chief of Party (COP): Farhat Y. Farhat - fyfarhat@eif-inc.com
Deputy COP: Sergey Nerpii – snerpii@ukrainetrade.com.ua
Resident Attorney: Marius Bordalba – mbordalba@ukrainetrade.com.ua

Presenter:
Mr. Gary Horlick – gary.horlick@ghorlick.com